

DCRLA No. 18 of 2007
With
Delay Condonation App.

Hon. P C. Pant, J.

This is delay condonation application in filing the appeal against acquittal against the judgment and order dated 17.11.2006, passed by learned Judicial Magistrate, Pauri in criminal complainant case No. 366 of 2006; Khushi Ram Uniyal Vs. Pyare Lal.

The delay in filing the appeal is sufficiently explained in the affidavit accompanying the delay condonation application. Therefore, the delay condonation application is allowed. 50 days delay in filing the appeal is condoned.

Also, heard on leave to appeal and perused the impugned judgment and order dated 17.11.2006, passed by the trial court, whereby the accused respondent is acquitted of the charge of offence punishable under Section 427 and 504 of I.P.C.

Perusal of the impugned judgment and order shows that criminal complaint earlier filed in respect of same offence, was dismissed by the trial court under Section 256 of Cr.P.C., as the complainant failed to appear before the court.

The case is not of the category of warrant trial, nor is it a case of discharge of accused before framing of the charge. Since, the accused respondent is already acquitted under Section 256 of Cr.P.C., in the earlier complaint filed by the complainant (present appellant), the accused respondent could not have been convicted in respect of same offence thereafter by entertaining the fresh criminal complaint.

In the circumstances, the leave to appeal is refused.

The Criminal Appeal (defective) No. 18 of 2007 is dismissed.

(P.C.P., J.)
21.03.2007

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